IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3263 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANVANTIBEN NANALAL DOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3263 of 2003

MR NV ANJARIA for Petitioner No. 1

MR SN SHELAT, ADVOCATE GENERAL with Ms MD MEHTA, ASST. GOVERNMENT PLEADER for Respondent No. 1,3

MR NIKHILESH J SHAH for Respondent No. 2

..... for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 07/07/2004

ORAL JUDGEMENT

Amendment granted.

The petitioner, a resident of Anjar, has been aggrieved by Town Planning Scheme No. 1 made by the respondent authorities because a portion of his house will have to be demolished as a result of the scheme. The petitioner has approached this court with a prayer that the respondent authorities be restrained from doing anything, whereby his house situated at City Survey Nos. 2415 and 2417 - final and original plot No. 369, may be demolished. It has been also prayed that notices, whereby the petitioner has been asked to demolish a portion of the building in question, which are at Annexure H to the petition, be quashed and set aside and operation of the scheme, whereby his building is to be adversely affected, be declared to be illegal.

2. Learned advocate Shri Anjaria appearing for the petitioner has drawn my attention to the impugned notice, which is at p. 41, and has submitted that the petitioner will have to hand over possession of the portion marked in yellow colour in the said notice. In the process of handing over possession of the said yellow marked portion, not only the building belonging to the petitioner shall have to be demolished, but some portion, which is being used by him in survey No. 2417 (which has been denoted in black ink), will also have to be demolished. It has been submitted by him that the plots have been reconstituted in an absolutely unreasonable and arbitrary manner and the planning is also perverse and the authorities have acted against the principles of proportionality. It has been submitted by him that by reconstitution of F.P. No. 369, in a manner which would require the petitioner to demolish his house, nobody is going to benefit.

3. It has been further submitted by him that according to the provisions of sec. 45(1) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as 'the Act'), the respondent authorities should have attempted to make sure that the constructed property of the petitioner is not demolished as a result of reconstitution of city survey Nos. 2415 and 2417, which have now been consolidated and is shown as F.P. No. 369 at page 41.

4. It has been further submitted that the respondent authorities have exceeded their power in the process of making the scheme. The scheme is to be made for rehabilitation of earthquake affected residents of Anjar. The said scheme is not for development and, therefore,

more stress ought to have been placed on the issue of rehabilitation, but, instead of doing so, the respondent authorities have acted in a manner that his house, which could withstand even powerful earthquake, will have to be demolished as a result of the town planning scheme.

5. It has been also submitted that the petitioner was made to understand that there would not be any effect of the scheme on his plot or building. Now, after finalization of the scheme, the respondent authorities have served notices, which are at Annexure H to the petition, whereby the petitioner is required to hand over a portion of his land, over which construction has been put up, to the respondent authorities.

6. Alternatively, it has been submitted by the learned advocate that this court should direct respondent No. 2 to submit an application to respondent No. 1 requiring variation of the said scheme as it is defective on account of errors or irregularities. He has submitted so because, by virtue of reconstitution of his plot under the scheme, a portion of his building will have to be demolished. This being an error, this court should direct respondent No. 2 to submit an application under the provisions of sec. 70 of the Act to respondent No. 1, so that the scheme can be varied so as to save the construction put up by the petitioner.

7. So as to substantiate his submissions, the learned advocate has relied upon the following judgments. The said judgments have been relied upon to highlight that, if a grave error has been committed, or if the authorities have acted in an arbitrary or mala fide manner, this court can interfere and the petitioner's grievance can be redressed.

(1) (2003) 3 SCC 186 Cellular Operator Association of India & Ors. Vs. VOI & Ors

(2) 1996(2) GLH 287 Shilpi Park Cooperative Housing Society Vs. SUDA

8. In pursuance of the notice issued by this court, learned Advocate General Shri S.N. Shelat and learned AGP Ms. M.D. Mehta have appeared for respondents Nos. 1 and 3, whereas learned advocate Shri N.J. Shah has appeared for respondent No. 2.

9. It has been submitted by the learned advocates that the scheme has been made as per the provisions of the Act without committing any error. It has been

submitted that only after due deliberation and careful consideration, the plots have been reconstituted. It has been also submitted that in the process of reconstitution of plots, at times citizens may have to suffer or forego something if their properties are adversely affected. It has been submitted by them that in the process of planning, an individual's interest becomes subordinate to the interest of the society at large and, if, for having better planning, the plots are reconstituted, and in the said process property of some persons are adversely affected, it cannot be said that the authorities concerned with making of the scheme have acted in an arbitrary manner.

10. So far as the submission with regard to violation of the provisions of sec. 45(1) of the Act is concerned, it has been submitted that as far as possible care had been taken to see that buildings or superstructures, which were in existence, were not adversely affected or demolished in the process of reconstitution of plots. It has been however submitted that it is practically impossible to do the planning work without adversely affecting some of the buildings or superstructures put up by the citizens. In the process of planning, unfortunately, a portion of the petitioner's building will have to be demolished, but that would not mean that the respondent authorities have acted in an arbitrary or perverse manner. All possible efforts would be taken to see that minimum damage is caused to the construction put up by the petitioner when a portion of his building is demolished. It has been submitted that as a result of reconstitution of the plot, building of the petitioner constructed on land admeasuring 1.50 x 5.90 sq.mtrs. will have to be demolished. The petitioner has also put up construction of a bath room on land, which has been now reconstituted as F.P. No. 369 and, therefore, the petitioner will have to part with the said structure, which is on the northern side on his F.P. No. 368.

11. Incidentally, it has been submitted on behalf of the respondents that though the petitioner's land could have been deducted to the extent of 10% as a result of reconstitution of his plot, in fact there is no deduction affected from his land. The general policy, which has been adopted by the authorities while making the said scheme, was that 10% of the land, from a plot having more than 70 sq.mts. can be deducted in the process of reconstitution. Original plot of the petitioner admeasured 76.31 sq.mtrs. and his final plot also admeasures 76.31 sq.mtrs. Thus, the petitioner is not suffering any loss of land on account of reconstitution.

12. It has been further submitted that as a result of reconstitution of the plot, the petitioner would be having fairly regular shape of his plot for putting up his construction and he would also be having frontage of 6 Mts. wide road. It has been submitted that formerly, as can be seen from a map, which is at pg. 57 of the paper-book, the size and shape of his plot bearing survey Nos. 2415 and 2417 was absolutely irregular. As a result of the reconstitution, the petitioner will be having a reasonably good shape of his plot so as to put up construction. The petitioner would be having substantial surplus land on the southern side of his plot so that he can put up further construction. Moreover, the petitioner would also be having surplus land on his front side facing the main road.

13. It is also pertinent to note that in the course of arguments an effort was made by the learned advocate for the petitioner to show that the respondent authorities had done undue favour to Kashiben, owner of F.P. No. 226 and 708, which are on western side of F.P. No. 369 belonging to the petitioner. It has been submitted on behalf of the respondents that in fact Kashiben has suffered loss to the tune of 15.93 sq.mtrs. of land and the final plot given to her is also not having regular shape. Moreover, Kashiben is not having proper access from the main road. Thus, the allegation levelled by the petitioner with regard to doing undue favour to Kashiben has also been denied.

14. It has been also denied that the scheme has been made only for the purpose of rehabilitation. The learned advocates have referred to notification dated 9th May, 2001, whereby respondent No. 2 had been constituted. The said notification clearly denotes that the scheme was not only for rehabilitation but it was also for better development. It has been stated that Anjar town has to be developed in a systematic manner and with faster implementation of the earthquake rehabilitation programme. Therefore, the object stated in the aforestated notification clearly denotes that the scheme is not only for rehabilitation, but is also for development of the city in a systematic manner.

15. Thus, it has been submitted that the scheme was not made only for the purpose of rehabilitation. It has been also denied on behalf of the respondents that any assurance was ever given to the petitioner that size, shape and location of his original plot would remain the same.

16. It has been also submitted that in the matter of making reconstitution of plots, the respondent authorities had taken due care. It has been also submitted that very few persons have made grievances with regard to reconstitution of plots. Thus, it has been submitted by the learned advocates for the respondents that there is no substance in the petition and, therefore, the petition should be rejected.

17. It has been finally submitted on behalf of the respondents that for the first time the petitioner has made a grievance with regard to reconstitution of the plot. It has been submitted that the draft town planning scheme had been sanctioned by the government on 17th July, 2002. The petitioner made a grievance with regard to reconstitution of his plot under his letter dated 24.2.2003, which is at Annexure 1 to the petition. Before that, the petitioner had made a representation on 9.10.2001 (Annexure D), which was with regard to certain inconvenience caused to him as water and electricity were not being supplied to the petitioner. The said representation had nothing to do with reconstitution of the plots. It has been submitted that ample opportunities were given to the petitioner to make representations or file his objections, but for the reasons best known to the petitioner, he did not make any representation. Due publicity had been given to the scheme, not only in accordance with the provisions of the Act, but also in addition thereto, publicity was also given through TV. It has been submitted that the petitioner is now estopped from making any grievance, especially when he did not file any objection at the relevant time. It has been submitted that the petition is not having any substance and it deserves to be dismissed.

18. I have heard the learned advocates and have also gone through the record pertaining to the case. Upon perusal of the record and upon hearing the learned advocates, I do not find any substance in the petition for the reasons recorded hereinbelow.

19. It is true that the petitioner would be losing a portion of the construction put up by him on his land because his plot has been reconstituted. Simply because the petitioner has to part with some portion of land, upon which construction has been put up, it cannot be said that the scheme has been prepared in an irrational or arbitrary manner. In the process of development, some people may have to suffer, especially in view of the fact

that the city of Anjar had been built up in the past in a haphazard manner. If one looks at the survey numbers, which have been shown in some of the maps which have been annexed to the petition, it is clear that the plots, which the citizens were having, were not of regular shape and size and constructions were put up in an unplanned manner. Roads were very narrow and therefore the respondent authorities had to widen the roads. It is pertinent to note that at the time when the earthquake had taken place on 26.1.2001, it was not possible for the authorities to reach the affected persons as roads/lanes were so narrow that it was not possible to ply ambulance or vehicles of fire brigade so as to give necessary help to the affected persons. Looking to the said fact, the authorities decided to widen the roads in such a manner that all houses have frontage of roads with reasonable width. It is pertinent to note that the object with which the scheme has been framed is also to develop the city in a systematic manner.

20. The submission made on behalf of the petitioner that the scheme has been made for rehabilitation alone does not appear to be correct. If one looks at the notification dated 9th May, 2001 referred to hereinabove, it clearly reveals that the scheme was to be framed for speedy implementation of reconstruction and rehabilitation programme and for development of the city in a systematic manner. Thus, it is clear that the scheme has not been made only for the purpose of rehabilitation, but is also for development of the city.

21. There is nothing to show that any assurance was ever given to the petitioner by the respondent authorities that he would be given the same plot as final plot in lieu of his survey Nos. 2415 and 2417. Ample opportunities were given to the citizens to look or inspect the maps, which were prepared by the authorities under the Act. It appears that the petitioner never bothered to have inspection. Even it appears that when the petitioner was asked to remain present on 3.9.2002 in pursuance of notice dated 17.8.2002 (Annex. F), he did not remain present. The petitioner never made any representation with regard to the final plot, which was to be allotted to him. Thus, the petitioner remained totally careless with regard to his alleged rights and has approached this court after the scheme has been finally sanctioned by the government on 17.7.2002. It is pertinent to note that no representation was ever made by the petitioner to respondent no.2 making grievance with regard to the size or shape of the plot or with regard to demolition of the construction put up by him at his

original plot. There is nothing on record to show that the petitioner had approached the concerned authority at the appropriate time when objections were invited by the authorities.

22. Even if the petitioner is losing some portion of his land, over which he has put up construction, it cannot be said that the authorities have acted in an arbitrary or unreasonable manner. There does not appear to be any perversity on the part of the respondent authorities. It cannot be said that the scheme has been prepared in an unreasonable manner because the petitioner has been constrained to demolish some portion of his building.

23. In the course of hearing, learned advocate Shri N.J. Shah, in pursuance of instructions received by him from persons having sound knowledge in the field of civil engineering, has submitted that even after removal of a portion of the building, which the petitioner has to remove, the whole building would not be demolished as alleged by the petitioner. It is true that some portion of the building will have to be demolished, but that is not likely to affect the entire building. It is also pertinent to note that for the damage which would be suffered by the petitioner, he is to be duly compensated. If the amount of compensation is less, the petitioner can definitely approach the concerned forum for enhancement of the compensation as provided in the Act. Thus, the averments with regard to damage being caused to the petitioner cannot be given much importance as the damage is likely to be compensated in terms of money.

24. At this stage a prayer for giving direction to the respondent authorities for making variation in the scheme under sec. 70 of the Act can also not be entertained. If the petitioner feels that variation is required, it is always open to him approach the State Government. Looking to the fact that the petitioner never made any effort in the past to object to the reconstitution, at this stage it would not be proper for this court to give such a direction. However, if the petitioner makes any representation to the concerned authority, I am sure that the authority shall look into the grievance, which might be ventilated in the application.

25. For the aforestated reasons, I do not find any substance in the petition and the petition is rejected. Notice is discharged. Ad-interim relief granted earlier stands vacated.

26. Learned advocate Shri Anjaria has submitted that the ex-parte ad-interim relief granted earlier be continued for some time. The said request has been objected to by the learned advocates for the respondents. Looking to the facts of the case, it is directed that the ad-interim relief should be continued for a period of six weeks from today.

(A.R. Dave, J.)

(hn)